March 1, 1992. This bill was signed by the Governor on October 7 (Chapter 705, Statutes of 1991).

AB 1090 (Hayden), as amended September 5, requires the Public Utilities Commission (PUC) to direct that a portion of electrical generating capacity be reserved or set aside for renewable resources until it completes a specified electrical generation procurement methodology. This bill was signed by the Governor on October 13 (Chapter 1023, Statutes of 1991).

SB 634 (Rogers). Existing law authorizes CEC to make loans from geothermal revenues deposited in the Geothermal Resources Development Account to entities engaged in the exploration and development of geothermal energy. As amended July 2, this bill also authorizes CEC to make grants to those entities. This bill was signed by the Governor on October 5 (Chapter 520, Statutes of 1991).

SB 1206 (Committee on Energy and Public Utilities), as amended September 3, requires the Department of General Services to develop a multi-year plan for cost-effective energy efficiency in state facilities. This bill was signed by the Governor on October 14 (Chapter 1121, Statutes of 1991).

AB 1732 (Costa), as amended September 5, requires CEC to develop best practice/best technology model codes for energy-efficient new residential and nonresidential buildings, which shall be available for voluntary adoption by local governments. This bill was signed by the Governor on July 26 (Chapter 172, Statutes of 1991).

SB 1216 (Rosenthal), as amended May 23, would enact the Energy Security and Clean Fuels Act of 1992, which would authorize, for purposes of financing a specified energy security and clean fuels program, the issuance of bonds in the amount of $100 million. This two-year bill is pending in the Senate Appropriations Committee.

AB 920 (Hayden), as amended September 11, would require CEC, if funds are appropriated, to develop and deliver to the appropriate policy committees of the legislature by May 1, 1994, a plan to reduce greenhouse gas emissions. This two-year bill is pending in the Senate Appropriations Committee.

AB 1064 (Sher), as amended July 1, would require CEC to include in its biennial report recommendations relative to practicable and cost-effective conservation and energy efficiency improvements for investor-owned and publicly-owned utilities. It would also require CEC, in conjunction with the PUC and investor-owned and municipal utilities, to establish a comprehensive demand-side data monitoring and evaluation system to provide detailed and reliable statistics on actual energy savings from all classes of demand-side management programs. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

AB 1586 (Moore), as amended May 30, would require CEC, on or before January 1, 1993, to certify home energy conservation rating systems and procedures that calculate energy and utility bill savings to be expected from conservation measures. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

SB 1203 (Committee on Energy and Public Utilities), as introduced March 8, would abolish CEC and create the California Energy Resources Board, and authorize the Board to succeed to all powers, authority, responsibilities, and programs of CEC. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

SB 1204 (Committee on Energy and Public Utilities), as introduced March 8, would return, effective January 1, 1993, CEC's authority to certify new powerplant sites and facilities to cities and counties for projects utilizing non-nuclear energy. Cities and counties would be authorized to refer an application for such certification to CEC. This two-year bill is pending in the Senate Committee on Energy and Public Utilities.

SB 1205 (Committee on Energy and Public Utilities), as amended September 13, would require CEC, on or before December 31, 1994, to determine whether any appliances that are currently not subject to a CEC standard should be regulated and, for any such appliance, to adopt standards in accordance with prescribed procedures. This two-year bill is pending in the Senate inactive file.

SB 1207 (Committee on Energy and Public Utilities), as introduced March 8, would amend existing law which requires CEC to adopt, by June 30, 1992, home energy rating and labeling guidelines that may be used by homeowners to make cost-effective decisions regarding the energy efficiency of their homes. The bill would require CEC to adopt a single, consistent method for rating the energy efficiency of both new and existing homes by January 1, 1993. This two-year bill is pending in the Assembly Natural Resources Committee.

SB 1208 (Committee on Energy and Public Utilities), as amended September 13, would require CEC, as part of its biennial report, to establish priority technologies for research, development, and demonstration; establish specific performance goals for these priority technologies; and develop research, development, and demonstration programs which pursue these technologies. This two-year bill is pending on the Assembly floor.

AB 2130 (Brown), as amended May 7, would direct CEC to prescribe, by regulation, standards for minimum levels of operating efficiency, maximum energy consumption, or efficiency design requirements, based on a reasonable use pattern, for appliances whose use, as determined by CEC, requires a significant amount of energy on a statewide basis; and require CEC, by January 1, 1993, to adopt energy conservation measures that are cost-effective and feasible for privately-owned residential buildings. This two-year bill is pending in the Assembly Ways and Means Committee.

LITIGATION:

In ***Department of Water and Power, City of Los Angeles v. CEC***, No. B-055524, currently pending in the Second District Court of Appeal, CEC seeks review of the trial court's decision that the Los Angeles Department of Water and Power's (LADWP) Harbor Generating Project is not subject to CEC's jurisdiction. The Los Angeles County Superior Court agreed with LADWP that the repowering project is not subject to CEC's jurisdiction as it cannot be considered a "modification of an existing facility" under Public Resources Code section 25123 or a "construction of any facility" under section 25110. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 159; Vol. 11, No. 1 (Winter 1991) p. 140; and Vol. 10, No. 4 (Fall 1990) pp. 167–68 for detailed background information on this case.) All briefs have been submitted by the parties; oral argument was scheduled for November 25. The California Municipal Utilities Association (CMUA) has requested permission to file an *amicus* brief; at this writing, no decision has been rendered on CMUA's petition.

FUTURE MEETINGS:

CEC meets every other Wednesday in Sacramento.

DEPARTMENT OF FISH AND GAME

Director: Pete Bontadelli
(916) 653-7664

The Department of Fish and Game (DFG), created pursuant to Fish and

Game Code section 700 *et seq.*, manages California's fish and wildlife resources (both animal and plant). Created in 1951 as part of the state Resources Agency, DFG regulates recreational activities such as sport fishing, hunting, guide services, and hunting club operations. The Department also controls commercial fishing, fish processing, trapping, mining, and gamebird breeding.

In addition, DFG serves an informational function. The Department procures and evaluates biological data to monitor the health of wildlife populations and habitats. The Department uses this information to formulate proposed legislation as well as the regulations which are presented to the Fish and Game Commission.

The Fish and Game Commission (FGC), created in section 20 of Article IV of the California Constitution, is the policymaking board of DFG. The five-member body promulgates policies and regulations consistent with the powers and obligations conferred by state legislation in Fish and Game Code section 101 *et seq.* These regulations concern the taking and possession of birds, mammals, amphibians, reptiles, and fish. Each member is appointed to a six-year term. FGC's regulations are codified in Division 1, Title 14 of the California Code of Regulations (CCR).

As part of the management of wildlife resources, DFG maintains fish hatcheries for recreational fishing, sustains game and waterfowl populations, and protects land and water habitats. DFG manages 506,062 acres of land, 5,000 lakes and reservoirs, 30,000 miles of streams and rivers, and 1,300 miles of coastline. Over 648 species and subspecies of birds and mammals and 175 species and subspecies of fish, amphibians, and reptiles are under DFG's protection.

The Department's revenues come from several sources, the largest of which is the sale of hunting and fishing licenses and commercial fishing privilege taxes. Federal taxes on fish and game equipment, court fines on fish and game law violators, state contributions, and public donations provide the remaining funds. Some of the state revenues come from the Environmental Protection Program through the sale of personalized automobile license plates.

DFG contains an independent Wildlife Conservation Board which has separate funding and authority. Only some of its activities relate to the Department. It is primarily concerned with the creation of recreation areas in order to restore, protect and preserve wildlife.

MAJOR PROJECTS:

Commission's Refusal to List Gnatcatcher Greeted with Lawsuit. Rejecting the recommendation of DFG, the Fish and Game Commission on August 30 refused to list the California gnatcatcher as an endangered species candidate under the California Endangered Species Act (CESA).

The California gnatcatcher is a four-inch-long, blue-gray songbird which makes its home in the rapidly disappearing coastal sagebrush of southern California. The Natural Resources Defense Council (NRDC) and biologist Jonathan Atwood petitioned FGC to list the gnatcatcher as endangered in January 1991. The issue has sparked considerable controversy in southern California, as developers in San Diego, Orange, and Riverside counties seek to raze and develop the last remaining habitat of the species, while environmentalists call for strict application of CESA. Fewer than 1,800 pairs of the birds now exist because most of its coastal sage scrub habitat has been developed.

Easily one of the most controversial CESA requests in years, the petition sparked hundreds of written comments (including a petition containing 7,400 signatures in support of the listing) and much oral testimony at public hearings at FGC's June, July, and August meetings. The Commission was also presented with DFG's May 6 conclusion that there is sufficient biological evidence to indicate that the petitioned action may be warranted, and its recommendation that the Commission grant the petition and list the gnatcatcher as a candidate species, thus providing the bird and its habitat with limited protection for a year-long period while DFG conducts further population studies. Following the August 2 hearing, the Commission closed the public comment period and deferred action until its August 30 meeting; the August 30 agenda stated that no further public testimony would be taken.

However, at the August 30 meeting, FGC permitted Michael Mantell, Undersecretary for the Resources Agency and a Wilson appointee, to address the Commission on the issue. Mantell urged FGC not to list the gnatcatcher, and instead to rely on the new Natural Community Conservation Planning Program (NCCP) in AB 2172 (Kelley), which had not even passed the legislature at that time. (*See infra* LEGISLATION.) Under the NCCP, DFG may negotiate and enter into agreements with local governments and interested persons to voluntarily set aside land as habitat for local species. However, the NCCP provides no long-term legal protection for declining species; only a listing by FGC or the federal government provides such protection.

Following Mantell's testimony, FGC Executive Director Robert Treanor reminded the Commission that its delay in listing the winter-run chinook salmon has forced the state to undertake a much more expensive conservation program than would have been necessary under an earlier listing (*see infra* for related discussion).

Commissioner Boren, the only Wilson appointee on FGC, stated that the petition meets all CESA criteria and moved that it be granted. No Commissioner seconded his motion. Following the failure of Boren's motion, Commissioner Taucher moved to deny the petition, but failed to state a justification as required by law. When reminded of his statutory obligation by Treanor, Taucher stated that the Audubon Society's count of 1,300 pairs of gnatcatchers raises clear doubt as to the declining status of the species. Commissioner Biaggini seconded Taucher's motion, and Commissioner McCracken agreed. Thus, NRDC's petition was denied by a vote of 3–1, and the only Commissioner to support it was the lone Wilson appointee.

On September 17, FGC released the following reasons for its refusal to list the California Gnatcatcher:

-The petition does not adequately demonstrate that the degree or immediacy of threat to the species is sufficient to warrant designation as a candidate species for endangered listing.

-The petition does not contain sufficient scientific information relative to habitat requirements and territory size.

-The petition does not contain clarifying information relative to the question of subspecies designation.

-The petition does not contain an adequate recovery plan.

-The petition does not adequately discuss at what point this species would be considered stable and sustainable and delisting might proceed.

-The petition does not adequately explain the population trends of the species and does not adequately demonstrate that the species has declined in numbers in recent years.

-The petition fails to fully satisfy the format and content requirements of section 670.1, Title 14 of the CCR.

FGC's decision was followed by two interesting developments. First, on September 5, the U.S. Fish and Wildlife Service proposed the addition of the gnatcatcher to the endangered species list under the federal Endangered

Species Act. Although viewed by environmentalists as extremely helpful and a vindication of DFG's biological evidence on the decline of the gnatcatcher and its habitat, the federal government's action does not provide immediate and complete protection to the species; it triggers a 90-day public comment period, after which the Service will make its decision.

On September 13, NRDC filed suit against FGC in Sacramento County Superior Court under CESA, seeking a court order requiring the Commission to list the bird immediately. NRDC contends that, in light of the substantial biological evidence on the rapid depletion of the species and its habitat, FGC's refusal to list the bird is arbitrary and capricious. If the court reaches the merits of the lawsuit, its decision will be the first judicial interpretation of CESA, its implementation by FGC, and the extent of its protections to declining species and their habitat. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 1 for extensive background information.)

1991 Progress Report on Winter-Run Chinook Salmon Recovery. At FGC's August 29 meeting, DFG presented the Commission with its annual report on its ten-point recovery plan for the Sacramento River winter-run chinook salmon. After several years of rejecting petitions to list the fish, whose population once numbered 60,000–120,000 in the 1960s, FGC decided on April 27, 1989, to reconsider the matter after being presented with evidence that only 2,085 of the fish remained. By its very next meeting (May 16, 1989), FGC was informed that only 600 salmon then remained, and finally decided to list the fish as endangered. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 154–55; Vol. 9, No. 3 (Summer 1989) p. 108; and Vol. 7, No. 4 (Fall 1987) p. 94 for background information.)

According to DFG's report, the population has now plummeted to an estimated 191 fish (33 were actually counted as they passed the Red Bluff Diversion Dam). This number represents a 91% decline in population in four years. DFG's ten-point recovery plan calls for the gates at RBDD to remain fully raised from December 10, 1990 to May 3, 1991, which allowed the salmon to pass upstream more effectively than the use of fish ladders, but made it difficult to count the fish.

Another point of the plan is temperature control at Shasta Dam, necessary to prevent warming of the water which would result in nearly 100% mortality to the 1991-year class of winter-run salmon; DFG took several measures to maintain and conserve cold water at the dam. DFG also noted a decrease in the number of squawfish below the RBDD, which may feed on salmon smolts. Squawfish thrive in the warm water created by the numerous water projects in the Delta; DFG believes the decrease in their number may be due to keeping the RBDD gates open for an extra month.

Other items in the ten-point plan include management of pollution control at Spring Creek, where mines leak heavy metals into the river; restoring spawning gravel in the Upper Sacramento River; restricting fishing; developing an artificial spawning program; and conducting additional studies.

The greatest challenges facing DFG and the winter-run chinook salmon, however, are the continuing drought and the numerous dams and water diversion projects in the region. The RBDD, Shasta Dam, Anderson-Cottonwood Irrigation District Dam, Keswick Dam, and Glenn-Colusa Irrigation District Dam hinder the upstream travel of the adult salmon, prevent the outmigration of the juveniles and fry, and suck or lure them into traps and canals. The resulting lakes and the current drought warm the water to levels which are comfortable to squawfish but lethal to salmon.

Further compounding the problem was FGC's refusal to list the winter-run chinook until its population approached zero, and the actions of federal and state agencies whose mandate is to provide water to California in the face of a five-year drought. Despite repeated requests, the U.S. Bureau of Reclamation has on several occasions released water into the Keswick Stilling Basin without previously notifying DFG, resulting in the entrapment and death of winter-run salmon. At present, DFG is the most optimistic about its artificial propagation program, which could result in 17,000 smolts available for release in January 1992.

DFG Proposes to Add Marbled Murrelet to Endangered Species List. On September 13, FGC published notice of DFG's proposal to amend section 670.5, Title 14 of the CCR, to list the marbled murrelet as an endangered species under CESA. (*See infra* agency report on BOARD OF FORESTRY; *see also* CRLR Vol. 11, No. 3 (Summer 1991) pp. 171–72 for background information.) This proposal is based upon DFG's documentation of drastic declines in the population of the species. In its April 1991 report, DFG found that only 3.5% of the murrelet's essential nesting habitat remains. The best current estimate ranges from 1,650 to 2,000 individuals remaining in California, with its habitat fragmented into isolated old-growth forest areas. The percentage of marbled murrelet habitat remaining corresponds to the amount of original old-growth redwood forest remaining in California.

At issue is whether the proposed listing has come in time to save the murrelet from extinction in California, and whether the entire old-growth ecosystem remains viable after years of clearcutting. A 1980 U.S. Department of the Interior-funded survey determined a California marbled murrelet population of only 2,000 birds. In response to a request for listing in February 1991, DFG found that the murrelet meets the five criteria set forth for listing under the federal Endangered Species Act. The U.S. Fish and Wildlife Service proposed the listing of the murrelet in June, over two years behind schedule, under threat of a court order. FGC was scheduled to hold a public hearing regarding the proposed listing at its November 1 meeting in San Diego.

Mammal Hunting and Trapping Regulations. At its April 25 meeting in Sacramento, FGC adopted proposed regulations for the 1991–92 mammal hunting season pursuant to Fish and Game Code section 207. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 167; Vol. 11, No. 2 (Spring 1991) p. 156; and Vol. 11, No. 1 (Winter 1991) p. 125 for background information.) On June 28, the Office of Administrative Law (OAL) approved the mammal hunting regulations, which consist of amendments to sections 350, 360–64, 364.5, 368, 371, and 464, and the repeal of section 369, Title 14 of the CCR.

At its August 30 meeting, FGC adopted its 1991–92 mammal trapping regulations, including amendments to section 465.5, Title 14 of the CCR. Existing section 465.5 sets restrictions on the type of traps which may be used within the known range of the Sierra Nevada red fox and the San Joaquin kit fox. Those restrictions include mandatory use of a commercially manufactured padded trap with an adjustable pan tension device, and shock absorbing devices and swivels in the anchor chains. The proposed regulatory change would expand the use of padded-jaw traps statewide, to reduce potential stress to trapped animals and to provide reasonable opportunity for the public to trap furbearing and nongame mammals statewide.

In addition to this proposal, DFG presented FGC with eleven other options for the proposed trapping regulations, including the following: prohibit

steel leg-hold traps but allow all other methods of take currently authorized; no change to the current regulations; permit the use of various modified leghold and Conibear-type traps within and outside the current fox protection zone; permit the use of unpadded traps anywhere in the state, so long as they are submerged in water or floating; only permit the use of cage traps; eliminate archery as a method of take; and prohibit the use of dogs for pursuit and hunting. After chastising DFG for failing to provide a "recommended" option and leaving the Commission with a wide array of options without further guidance, FGC adopted mandatory statewide use of commercially manufactured padded leg-hold traps that are preapproved by DFG. At this writing, FGC's 1991–92 mammal trapping regulations have not yet been filed with OAL.

FGC Adopts 1991–92 Waterfowl Hunting Regulations. At its August 30 meeting, FGC adopted its 1991–92 waterfowl hunting regulations in Division 1, Part 2, Chapter 7, Title 14 of the CCR. DFG recommended several changes to last year's regulations, including the following:

-Under existing regulations, the state has four waterfowl hunting zones—Northeastern, Colorado River, Southern California, and the Balance of State Zone. DFG proposed two additional zones—Suisun Marsh and Southern San Joaquin Valley—and FGC approved both the additional zones. However, according to FGC Regulations Coordinator Ron Pelzman, the U.S. Fish and Wildlife Service approved the Southern San Joaquin Valley Zone but rejected the Suisun Marsh Zone. The Southern San Joaquin Valley Zone season was scheduled to commence on November 9 and continue for 58 consecutive days. This would differ from existing regulations because the Southern San Joaquin Valley Zone is in the Balance of State Zone, which has a split season—it begins on October 26 for 22 consecutive days, and reopens on November 30 for 37 consecutive days.

-Shasta Valley, which lies in both the Northeastern Zone and the Balance of State Zone under existing regulations, has been placed in the Balance of State Zone in the 1991–92 rules.

-Existing regulations require steel shot in certain designated areas for waterfowl hunting. The proposed regulations will require steel shot statewide for all waterfowl hunting.

FGC submitted the 1991–92 waterfowl regulations to OAL on September 20.

FGC Adopts 1991–92 Resident Small Game Hunting Regulations. At its August 2 meeting, FGC adopted its 1991–92 resident small game hunting regulations in Division 1, Part 2, Chapter 2, Title 14 of the CCR. The major changes from last year's hunting regulations are noted below:

-Existing section 300 (pheasant hunting) allows the take of either sex in Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura counties for a total of two pheasants per day, four in possession. The proposed change now allows only male pheasant to be taken throughout the entire state, two per day, four in possession; the season is from November 9 for 30 consecutive days.

-Existing section 301 (quail hunting) sets forth a shorter general quail hunting season for five northern counties compared with the bulk of the state. The proposed changes will lengthen the quail season in the five northern counties to match the general season of the rest of the state, from October 18 to January 26.

The Commission submitted the rulemaking package to OAL on August 15; OAL approved the regulations on September 16.

Revision of Regulations Governing Importation, Transportation, and Possession of Wild Animals. At its August 29 meeting, FGC received public comments on its proposed amendments to sections 671–671.5, Title 14 of the CCR, regarding wild animal caging. FGC recognized that its existing regulations are confusing to the public, difficult to enforce, and fail to provide for the proper care and treatment of wild animals. The DFG Director appointed a Committee on Care and Treatment of Wild Animals, and that Committee's recommendations are the basis for FGC's proposed revisions to the CCR.

These proposed regulatory changes would categorize prohibited species by reason for prohibition (prohibited animals are classified as either detrimental animals or welfare animals), clarify that wolf hybrids whelped after February 4, 1988 are prohibited, clarify prohibited taxonomic categories of animals, provide guidelines for care and treatment of animals, incorporate federal regulations related to general care of animals, establish specific caging and enclosure requirements, and establish requirements related to the transportation of animals.

The proposed amendments would also establish guidelines and qualifications for the issuance of permits to import, transport, and possess wild animals. A permit fee of $250 and an annual inspection fee of $100 would be established, with an additional inspection fee of $25 per hour for each hour in excess of one hour. These fees will make the program self-supporting as required.

The proposed changes are designed to provide minimum standards for humane care and treatment of animals related to quality of food, feeding procedures, availability of water, cleaning of cages, pest control, daily observation, handling, chaining, and public display. The specific facility and caging requirements for each species were deemed too voluminous for inclusion in Title 14, and are proposed to be published in a manual available from DFG.

FGC was scheduled to adopt the proposed regulatory changes at its October 4 meeting in Redding.

Legislative Analyst Recommends Solutions to DFG's Fiscal Problems. On September 3, the Legislative Analyst's Office (LAO) released a special study reviewing DFG. The purpose of the study was to provide the legislature with some background information and guidance in solving DFG's fiscal and other problems. The study focuses on three key issues which LAO believes hamper DFG's performance: (1) the lack of clarity of DFG's mission; (2) organizational problems; and (3) fiscal concerns. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 1 for background information.)

First, LAO notes that DFG historically has provided services and programs primarily for those who use or consume the state's wildlife and natural habitat resources, such as individuals who hunt and fish. However, as California's population becomes increasingly urbanized, this traditional constituency group has diminished. DFG's responsibilities relating to general habitat and endangered species protection have increased, requiring more programs which protect the overall resource base. LAO contends that within these dual roles, DFG lacks a clear focus on exactly what its relative priorities are, and how it should allocate its fiscal resources among its competing objectives.

Second, LAO states that DFG's organizational structure has drifted gradually away from its original, decentralized form to a more centralized organization. Communication problems between DFG headquarters and regional managers hamper the effectiveness of staff in implementing programs.

Third, LAO states that the demographic changes that have affected DFG's role over time have also

translated into a significant change in DFG's funding base. In the late 1950s, purchasers of hunting and fishing license contributed nearly 100% of the revenues used to fund DFG; today, these individuals contribute barely 50%. Replacing these revenue sources are various types of environmental funds, such as the Environmental License Plate Fund and the Public Resources Account (Proposition 99). According to LAO, DFG's fiscal problems include short-term difficulties in accurately estimating revenues, and a longer-term problem in that anticipated future revenues may be insufficient to keep pace with projected program demands. In addition, LAO notes that complex statutory and constitutional restrictions limiting the uses of the Department's own special funds distort the budgeting process and obstruct effective policy implementation.

In order to address DFG's problems, LAO recommends the following steps:

-The legislature should reconcile the dual missions that DFG currently tries to implement simultaneously, setting a clear policy of priorities for those times when DFG's resource use and the resource protection missions conflict.

-DFG should re-evaluate its structural organization and its allocation of staff.

-DFG should continue to make improvements in its revenue-estimating methodologies in order to avoid proposing the expenditure of funds not likely to materialize.

-When appropriating funds for support of DFG's programs, the legislature should establish a policy of considering the level of uncertainty in the Department's revenue estimates, and establishing prudent reserves which reflect the level of uncertainty of these estimates.

-The legislature should consider a number of options to address DFG's long-run fiscal problem of program demands exceeding available resources. For example, it could reduce workload by eliminating or reducing some DFG operations, expand DFG's financial resource base though greater use of broad-based funding and/or various user fees or "impact fees," and improve the allocation of available resources through better priority setting.

-DFG should institute a planning process in order to determine long-term objectives and set annual program priorities.

-The legislature should continue to support departmental operations primarily from special funds and repeal various overly-narrow statutory and constitutional constraints currently placed on the use of these funds. In combination with the previous step, LAO predicts that this would enable the legislature to establish priorities for the Department and then fund the highest priorities first.

Office of Oil Spill Prevention and Response. Effective January 1, 1991, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Chapter 1248, Statutes of 1990) established a comprehensive marine oil spill response and prevention program, headed by the Administrator of the Office of Oil Spill Prevention and Response (OSPR) within DFG. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 125 and Vol. 10, No. 4 (Fall 1990) p. 155 for background information.) The Administrator has been delegated broad powers in responding to and preventing oil spills, including:

-adopting and implementing regulations, guidelines, and policies for the program required by the bill;

-directing industry and state agency responses to oil spills, dispatching trained personnel to the scene in a timely manner, and determining the source of the spill;

-developing an oil spill response training program and periodic drills with the Office of Emergency Services and the California Conservation Corps;

-promoting the adoption of federal regulations to improve tanker safety equipment and operating procedures, and coordinating federal, state, and local planning and preparation for oil spill response;

-negotiating with Alaska, Oregon, and Washington to develop an interstate compact regarding tanker safety and oil spill response and prevention, and coordinating this compact with British Columbia and Mexico;

-implementing the state's oil spill contingency plan;

-establishing rescue and rehabilitation stations for wildlife;

-determining when it is appropriate to use dispersants; and

-encouraging development of better oil clean-up technologies.

The Act requires the preparation of contingency plans on several different levels. Every facility, tanker, and barge located in or entering state waters must prepare a contingency plan for review and approval by the Administrator which demonstrates that the necessary resources exist for response to a reasonable worst-case oil spill. In addition, a state contingency plan will detail how the state will respond to and prevent oil spills; local governments will also become involved through preparation of oil spill contingency elements of their area plans.

In order to improve marine safety, the Act requires tankers to have specified equipment for communication and an English-speaking person on the bridge; further, the Administrator may require a tug escort for tankers entering and leaving harbors. The Administrator will evaluate the U.S. Coast Guard vessel inspection program and vessel traffic service systems and, if these are found to be deficient, may implement his/her own. The Act will also create harbor safety committees for each port of the state.

Each marine facility must comply with both the provisions of the Act and regulations of the State Lands Commission (SLC). The SLC is a member of the 19-member State Interagency Oil Spill Committee, created to coordinate all state oil spill prevention and response programs. Additional committees formed by the Act include the Review Subcommittee, the Oil Spill Technical Advisory Committee, the Harbor Safety Committees for seven of California's busiest harbors, and the Environmental Enhancement Committee.

All regulations under the Act must meet the "best achievable protection" standards, based upon the best available technology and procedures. Whether this standard will compromise coastal protection by considering cost and inconvenience to oil carriers and coastal refineries remains to be seen.

Integral to this effort is the adoption of regulations governing the financial abilities of responsible parties to pay for any damage they incur during the transportation or transfer of oil within the geographic parameters provided for within the Act. On August 15, OSPR adopted sections 790–797, Title 14 of the CCR, emergency financial responsibility regulations. Under the regulations, on and after January 1, 1992, all operators or owners of marine facilities and operators or owners of vessels (*i.e.*, tankers or barges as defined in the regulations) must apply for and obtain a certificate of financial responsibility before operating in California. The regulations set forth the complete application and renewal procedure.

To obtain a certificate, the owner/operator of tankers, large barges, or the oil therein must demonstrate their current financial ability to pay at least $500 million for any damages arising from an oil spill during the term of the certificate. Effective July 1, 1995, the required minimum level of financial responsibility increases to $750 million; on January 1, 2000, the required minimum rises

again to $1 billion. Marine terminals and other marine facilities must demonstrate the financial ability to pay for any damages resulting from operations of the facility during an oil spill pursuant to a "reasonable worst-case oil spill formula" set forth in section 790(u) of the regulations. Those subject to these regulations may demonstrate financial responsibility through proof of insurance, qualification as a self-insurer, a surety bond, a letter of credit, a written guaranty, or other evidence of financial responsibility acceptable to the Administrator. The regulations also set forth grounds for suspension and revocation of a certificate.

OSPR was scheduled to hold public hearings on its proposed permanent adoption of the financial responsibility regulations on November 13 in Sausalito and November 15 in Long Beach.

Frenchman Reservoir Treated, Reopened. On June 11, DFG chemically treated Frenchman Reservoir in Plumas County in order to rid the lake of northern pike, a predatory fish which threatens already-depleted stocks of native bass, trout, and salmon. The reservoir was reopened for fishing on July 13. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 167–68; Vol. 11, No. 2 (Spring 1991) pp. 155–56; and Vol. 11, No. 1 (Winter 1991) p. 126 for background information.)

Update on Other Regulatory Changes. Following is a status update on other regulatory changes proposed and/or adopted by DFG/FGC in recent months:

-AB 3158 Filing Fees. On June 20, OAL approved DFG's adoption of new section 753.5, Title 14 of the CCR, to implement AB 3158 (Costa) (Chapter 1706, Statutes of 1990). AB 3158 requires DFG to impose and collect filing fees to defray the cost of managing and protecting fish and wildlife resources, including the cost of consulting with other public agencies, reviewing environmental documents submitted pursuant to the California Environmental Quality Act (CEQA), recommending mitigation, and other activities protecting those resources. One of the more controversial provisions of section 753.5 permits the imposition of a filing fee on projects which the lead or certified regulatory program agency finds to be *de minimis* in their effect on the environment. (*See infra* LEGISLATION for information on SB 495 and AB 2030; see CRLR Vol. 11, No. 3 (Summer 1991) p. 167; Vol. 11, No. 2 (Spring 1991) p. 156; and Vol. 10, No. 4 (Fall 1990) p. 155 for background information on AB 3158 and section 753.5.)

-Streambed Alteration Fees. On July 1, OAL approved DFG's adoption of section 699.5, which effectively doubles existing fees for streambed alteration agreement processing. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 168 for background information.)

-Civil Penalties. On August 6, OAL approved FGC's resubmission of sections 747 and 748, which establish civil penalties for the unlawful sale or possession of birds, mammals, amphibians, reptiles, fish, insects, or plants taken in violation of applicable statutes and regulations. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 168 and Vol. 11, No. 2 (Spring 1991) p. 156 for background information.)

-At its June 28 meeting, FGC held a public hearing on its proposal to amend section 27.65 to authorize the filleting of California halibut aboard vessels at sea. The proposed regulation establishes a minimum fillet length of 16.75 inches with the skin on, and permits halibut filleting in ocean waters between the U.S.–Mexico border and south of a line extending due west from Point Arena in Mendocino County. FGC believes the fillet length of 16.75 inches would allow fishers to obtain legal size fillets from all California halibut larger than 25 inches in total length, while helping to assure that whole fish shorter than the legal minimum length of 22 inches will not be retained and filleted by anglers. The filleting of other species of flatfish (Pacific and Greenland halibut, tonguefish, turbot, flounder, sole, and sand dab) is prohibited off California, to prevent the take and filleting of undersized California and Pacific halibut as "other" flatfish. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 168–69 and Vol. 11, No. 1 (Winter 1991) p. 127 for background information.) In spite of strong opposition from the California Fish and Game Wardens' Association, which represents the majority of the DFG game wardens responsible for enforcement, FGC adopted the proposed amendment at its August meeting; the rulemaking file was submitted to OAL on September 23.

LEGISLATION:

AB 641 (Hauser), as amended September 9, would require DFG to recommend mitigation measures to timber harvesting plans, if necessary, to protect fish and wildlife resources. This two-year bill is pending in the Senate inactive file (*see infra* BOARD OF FORESTRY for related discussion).

SB 819 (Mello), as amended August 26, requires DFG to prepare a plan for the management of wild pigs and to submit the plan to the legislature on or before January 1, 1995. This bill also provides, effective July 1, 1992, for the sale of wild pig tags for a specified fee, and makes it unlawful to take any wild pig without first procuring a tag. This bill, which also repeals the provision making it unlawful to take wild boar by means of a trap in Monterey County, was signed by the Governor on October 13 (Chapter 998, Statutes of 1991).

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 169–71:

AB 1811 (Isenberg), as amended June 26, requires DFG to conduct a survey of state-owned wetlands and nonwetlands suitable for restoration which are larger than 100 acres in the Sacramento Valley and the San Joaquin Valley, and to submit a report on the survey to the legislature and the Governor by January 1, 1994. This bill was signed by the Governor on October 11 (Chapter 851, Statutes of 1991).

AB 1409 (Lempert), as amended July 17, enacts the Oil Spill Response, Prevention, and Administration Fees Law, prescribing the procedures for collection of fees by the State Board of Equalization to finance the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, which (among other things) created the Office of Oil Spill Prevention and Response within DFG. (*See supra* MAJOR PROJECTS; *see also* CRLR Vol. 11, No. 1 (Winter 1991) p. 125 and Vol. 10, No. 4 (Fall 1990) p. 155 for background information.) This bill was signed by the Governor on August 1 (Chapter 300, Statutes of 1991).

AB 203 (Farr), as amended August 22, requires the Administrator of the Office of Oil Spill Prevention and Response within DFG to establish a rescue and rehabilitation station within the sea otter range on the central coast, and requires the Administrator to proceed to bid on the construction contract by January 1, 1994, and to consult with the specified agencies by January 1, 1992. This urgency bill was signed by the Governor on October 6 (Chapter 614, Statutes of 1991).

SB 1013 (Thompson), as amended July 15, prohibits DFG from issuing or renewing a permit for the operation of farms for alligators or any species of the family crocodilidae if the animals are kept for the use and sale of their meat or hides. This bill was signed by the Governor on October 9 (Chapter 776, Statutes of 1991).

AB 1339 (Cannella), as introduced March 7, reenacts prior law which permitted the DFG Director to designate not more than two days in each year as

free sportfishing days during which residents and nonresidents could, without having a sportfishing license and without the payment of any fee, exercise the privileges of a holder of a sportfishing license. This urgency bill was signed by the Governor on June 6 (Chapter 47, Statutes of 1991).

AB 1361 (Cortese). Fish and Game Code section 219 generally provides that regulations adopted by FGC may supersede any section of the Fish and Game Code. As amended July 2, this bill provides that a regulation which is adopted pursuant to this provision shall be valid only to the extent it makes additions, deletions, or changes to the Fish and Game Code that are necessary for the protection of fish, wildlife, and other natural resources under the jurisdiction of FGC, or if FGC finds that an emergency exists or will exist unless the action is taken. This bill also requires a regulation adopted pursuant to this provision to be supported by written findings adopted by FGC at the time of the adoption of the regulation setting forth the basis for the regulation, and provides that the regulation would remain in effect for not more than twelve months from its effective date. This bill was signed by the Governor on October 7 (Chapter 709, Statutes of 1991).

AB 1386 (Cortese). Under existing law, it is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by DFG, or use any material from the streambeds, without first notifying DFG of the activity. It is also unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any petroleum, acid, coal or oil tar, among other specified substances. As amended August 30, this bill makes persons who violate these provisions subject to a civil penalty of not more than $25,000 for each violation. This bill was signed by the Governor on October 11 (Chapter 844, Statutes of 1991).

SB 403 (L. Greene), as amended June 24, among other things, requires FGC to publish a notice in the *California Regulatory Notice Register* of the submission of a petition by DFG or the receipt of a petition, or the commencement of an evaluation, to add a species to or remove a species from the list of endangered species or the list of threatened species pursuant to CESA, and specifies the information required to be in the notice. This bill was signed by the Governor on October 13 (Chapter 974, Statutes of 1991).

AB 977 (Mountjoy), as amended June 24, permits FGC to authorize sport hunting of mature Nelson bighorn rams without regard to area. This bill also increases from one to three the permissible number of license tags to be issued each year to take a Nelson bighorn ram and requires DFG, not less than every other year, to designate a nonprofit organization organized pursuant to the laws of this state, or the California chapter of a nonprofit organization organized pursuant to the laws of another state, as the seller of these tags. This bill was signed by the Governor on September 8 (Chapter 371, Statutes of 1991).

AB 1389 (Cortese), as amended July 16, requires FGC, until January 1, 1997, to direct DFG to annually authorize not more than one antelope tag or more than 1% of the tags available for the purpose of raising funds for programs and projects to benefit antelope. Those tags could be sold at auctions or by other method, and are not subject to the $55 fee limitation. This bill was signed by the Governor on October 7 (Chapter 710, Statutes of 1991).

AB 2172 (Kelley), as amended August 30, authorizes DFG to enter into agreements with any person to prepare and implement a natural community conservation plan; authorizes DFG to prepare nonregulatory guidelines for the development and implementation of natural community conservation plans; and requires DFG to be compensated for the actual costs incurred in preparing and implementing natural community conservation plans. This bill was signed by the Governor on October 10 (Chapter 765, Statutes of 1991).

AB 89 (Felando), as amended April 22, requires any person taking sea cucumbers and hagfishes for commercial purposes to obtain a permit to do so from DFG. This bill was signed by the Governor on September 18 (Chapter 426, Statutes of 1991).

SB 495 (Johnston), as amended April 22, would exempt a project found by the lead or certified regulatory agency to be *de minimis* in its effect on the environment from payment of the AB 3158 filing fee (*see supra* MAJOR PROJECTS). This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 2030 (Allen), as introduced March 8, would require AB 3158 filing fees to be proportional to the cost incurred by DFG in reviewing environmental documents for projects which have a significant impact on trust resources of the Department; the bill would also delete the requirement that a fee be paid for projects for which a negative declaration is prepared. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

SB 796 (Rogers), as introduced March 7, would provide that AB 3158 filing fees are to be calculated in an amount necessary to defray the cost to DFG of providing the particular service, and would also prohibit the inclusion of any surcharge or amount intended to permit DFG to establish a reserve. This two-year bill is pending in the Senate Committee on Natural Resources and Wildlife.

SB 463 (McCorquodale), as amended September 3, would authorize DFG, until January 1, 2010 and with the approval of FGC, to qualify mitigation bank sites, as defined, in the Sacramento-San Joaquin Valley, to provide incentives and financial assistance to create wetlands in areas where wetlands are filled, or where there are discharges into wetlands under specified federal permits. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 126 for background information on this issue.) Although this two-year bill has passed both the Assembly and Senate, it is pending in the Senate inactive file.

AB 751 (Hauser), as amended June 3, would declare it the policy of the state and DFG to permit and promote nonprofit salmon release and return operations operated by licensed commercial salmon fishers for the purpose of enhancing California's salmon populations and increasing the salmon harvest by commercial and recreational fishers. The bill would require DFG to cooperate with fishing organizations in the siting and establishment of those operations, and to regulate the operations as necessary to ensure the protection of natural spawning stocks of native salmon. This two-year bill is pending in the Senate Appropriations Committee.

AB 1 (Allen), as amended May 13, would codify Proposition 132, the Marine Resources Protection Act of 1990, in the Fish and Game Code. That initiative established the Marine Resources Protection Zone, and completely prohibits the use of gill and trammel nets in the Zone after January 1, 1994. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 172 (Felando), as amended April 29, would (among other things) require the one-time compensation payable to persons surrendering permits to use a gill or trammel net to DFG pursuant to Proposition 132 to include the average annual ex vessel value of the fish (other than rockfish) landed by the permittee

within the Marine Resources Protection Zone during the years 1983–87, inclusive. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 1364 (Cortese), as amended April 23, would prohibit any change in the point of diversion, place of use, or purpose of use to individually or cumulatively cause the flow in any stream, river, or watercourse to drop below that flow needed to protect biologically sustainable populations of fish and wildlife. This bill would require all determinations of fact and all recommendations made pursuant to its provisions to be made by DFG. The bill, however, would not apply to any stream, river, or watercourse unless the Director of Water Resources determines that the year will or may be a dry or critically dry year. This two-year bill is pending in the Assembly Ways and Means Committee.

AB 1557 (Wyman), as amended May 8, would require FGC to determine whether its regulations or regulatory actions—particularly those which result in the listing of a species as endangered or threatened under the California Endangered Species Act (CESA)—would result in a taking of private property subject to the provisions of the California Constitution or the United States Constitution governing eminent domain. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 353 (Hauser), as amended April 15, would require FGC to designate additional fish spawning or rearing waterways that it finds necessary to protect fishlife. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 355 (Hauser), as introduced January 29, would authorize DFG to order the party responsible for the deposit of any petroleum or petroleum product into the waters of this state to repair and restore all loss or impairment of fishlife, shellfish, and their habitat, and require DFG to adopt regulations to carry out the bill by June 30, 1992. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 1641 (Sher), as amended August 20, would enact the Fish, Wildlife, and Endangered Species Habitat Conservation and Enhancement Bond Act of 1991. This two-year bill is pending on the Assembly floor.

ACR 35 (Wyman), as amended June 3, would request DFG to seek funding to conduct a review and evaluation to determine the status of the Mohave ground squirrel. This resolution is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 51 (Felando), as amended March 4, would require DFG to conduct a study of existing marine resource management activities and impacts, make recommendations on activities to maintain and increase the abundance of these resources, and report the results of the study and its recommendations to the Governor and the legislature by January 1, 1993. This two-year bill is pending in the Assembly Committee on Water, Parks and Wildlife.

AB 72 (Cortese), which, as amended August 20, would enact the California Heritage Lands Bond Act of 1992, is pending on the Assembly floor.

AB 145 (Harvey), as amended March 20, would increase from $100 to $250 the minimum fine for an initial violation of willful interference with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, or trapping at the location where that activity is taking place, and increase the minimum fine for a subsequent violation to $500. This two-year bill is pending in the Senate Judiciary Committee.

LITIGATION:

Vietnamese Fisherman Association of America, et al. v. California Department of Fish and Game, et al., No. C910778-DLJ, is still pending in the U.S. District Court for the Northern District of California. In this case, the court issued a preliminary injunction on April 1 prohibiting DFG from enforcing Proposition 132 beyond the three-mile state waters limit. The case continues to be on hold while the Pacific Fishery Management Council holds hearings on the issue. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 171 and Vol. 11, No. 2 (Spring 1991) p. 158 for background information.)

FUTURE MEETINGS:

January 9–10 in Palm Springs.
February 6–7 in Sacramento.
March 5–6 in San Diego.
April 2–3 in Long Beach.
May 14–15 in Bakersfield.

BOARD OF FORESTRY

Executive Officer: Dean Cromwell (916) 653-8007

The Board of Forestry is a nine-member Board appointed to administer the Z'berg-Nejedly Forest Practice Act (FPA) of 1973 (Public Resources Code section 4511 *et seq.*). The Board is established in Public Resources Code (PRC) section 730 *et seq.*; its regulations are codified in Division 1.5, Title 14 of the California Code of Regulations (CCR). The Board serves to protect California's timber resources and to promote responsible timber harvesting. Also, the Board writes forest practice rules and provides the Department of Forestry and Fire Protection (CDF) with policymaking guidance. Additionally, the Board oversees the administration of California's forest system and wildland fire protection system, sets minimum statewide fire safe standards, and reviews safety elements of county general plans. The Board's current members are:

Public: Terry Barlin Gorton (Chair), Franklin L. "Woody" Barnes (Vice-Chair), Robert J. Kerstiens, Elizabeth Penaat, and James W. Culver.

Forest Products Industry: Mike A. Anderson, Joseph Russ, IV, and Thomas C. Nelson.

Range Livestock Industry: Jack Shannon.

The FPA requires careful planning of every timber harvesting operation by a registered professional forester (RPF). Before logging operations begin, each logging company must retain an RPF to prepare a timber harvesting plan (THP). Each THP must describe the land upon which work is proposed, silvicultural methods to be applied, erosion controls to be used, and other environmental protections required by the Forest Practice Rules. All THPs must be inspected by a forester on the staff of the Department of Forestry and, where deemed necessary, by experts from the Department of Fish and Game, the regional water quality control boards, other state agencies, and/or local governments as appropriate.

For the purpose of promulgating Forest Practice Rules, the state is divided into three geographic districts—southern, northern, and coastal. In each of these districts, a District Technical Advisory Committee (DTAC) is appointed. The various DTACs consult with the Board in the establishment and revision of district forest practice rules. Each DTAC is in turn required to consult with and evaluate the recommendations of the Department of Forestry, federal, state, and local agencies, educational institutions, public interest organizations, and private individuals. DTAC members are appointed by the Board and receive no compensation for their service.

In early August, Governor Wilson announced his appointment of three new members to the Board. Terry Barlin Gorton, an attorney from San Diego,